UNITED STATES
v.
JAMES A. WOOLSEY ET AL.

IBLA 73-244 Decided September 25, 1973

Appeal from the decision by Administrative Law Judge L. K. Luoma holding nine lode mining claims null and void. (Contest Nos. A 5446, A 5446 ! A).

Affirmed.

Administrative Procedure: Generally ! ! Mining Claims: Contests ! Mining Claims: Determination of Validity

The United States may contest the validity of any mining claim on federally owned lands. The proper forum for such a proceeding is a contest held before an Administrative Law Judge.

Administrative Procedure: Burden of Proof ! ! Mining Claims: Contests ! ! Mining Claims: Determination of Validity

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

Administrative Procedure: Burden of Proof ! ! Mining Claims: Contests ! ! Mining Claims: Determination of Validity

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery

has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

Mining Claims: Discovery: Generally

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

APPEARANCES: Edward B. Berger, Esq., Whitehill, Berger & Karp, P.C., Phoenix, Arizona for appellants; Fritz L. Goreham, Esq., United States Department of the Interior, Phoenix, Arizona, for the Government.

OPINION BY MR. STUEBING

James A. Woolsey, Vernon B. Smith, Monte Seymour, and Yukon Exploration and Mining Company, Inc., have appealed from the December 5, 1972, decision of Administrative Law Judge 1/ L. K. Luoma holding their nine lode claims invalid for lack of discovery of a valuable mineral deposit.

The claims were located in 1960, by one of the contestees, James A. Woolsey. In 1968, the Bureau of Land Management granted the Southern Pacific Company a right of way across the claims "subject to all existing valid rights on the date of the grant." The Southern Pacific Company built a spur line across the right of way which led to a processing plant financed in part by a loan from the United States General Services Administration (GSA). Apparently, the Southern Pacific Company never obtained the permission of contestees to build the spur line.

When contestees later requested the Southern Pacific Company to move the spur line so that they could do assessment and exploration work in the area of the right of way, the Southern Pacific, the GSA, and the owner of the processing plant made inquiry of the

1/ The title of "Hearing Examiner" has been changed to "Administrative Law Judge" 37 F.R. 16787, 38 F.R. 10939-40.

Bureau of Land Management concerning the validity of the claims. The Bureau began an investigation of the validity of the claims, and as a result of a recommendation by the Government's mineral examiner, the Government initiated a contest which resulted in the decision declaring contestees' claims null and void.

Contestees (appellants) have suggested that this is actually a private dispute between themselves and the owner of the processing plant. Therefore, they argue, the Government has abused its authority by initiating contest proceedings instead of leaving the dispute to another forum, viz., a federal district court.

The Supreme Court has held several times that controversies involving the validity of mining claims "should be solved by appeal to the land department and not to the courts." Orchard v. Alexander, 157 U.S. 372, 383 (1895); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 338 (1963). In any event, the authority of the Secretary to initiate proceedings to contest the validity of unpatented mining claims on the public domain does not depend upon an assertion by the United States of some other use for the public lands; establishment of clear title to the lands is sufficient justification. Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964). The initiation of contests to determine the validity of mining claims where the programs or interests of other federal agencies are adversely affected by title uncertainties created by the location of such claims has long been a regular practice of this Department. "[T]he Government must have the right to possession of its land free from a useless and annoying encumbrance." Mulkern v. Hammitt, 326 F.2d 896 (9th Cir. 1964).

Appellants contend that the Government has failed to carry its burden of proof since the Government's mineral examiner failed to conduct certain types of exploration and testing on their mining claims. This argument is wholly without merit since appellants apparently misconceive the nature of both the Government's burden of proof and the duties of the Government's mineral examiner.

It has been said by many that the Government's burden of proof is that of presenting a prima facie case of lack of discovery of a valuable mineral deposit. The burden of going forward then shifts to the claimant to establish affirmatively that a discovery has been made. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); United States v. Kelty, 11 IBLA 38 (1973).

A prima facie case has been made where a government mineral examiner testifies that he has examined the exposed workings on a claim and has found no mineralization sufficient to support the finding of a discovery of a valuable mineral deposit. United States v. Gould, A-30990 (May 7, 1969). In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant. United States v. Kelty, supra; United States v. Lease, 6 IBLA 11, 79 I.D. 379 (1972); United States v. McGuire, 4 IBLA 307 (1972).

It is clear from the testimony developed at the hearing that the Government's mineral examiner found no minerals exposed on the claim which would justify the finding of a discovery. When the mineral examiner discussed the possibility of a joint inspection of the claims with a representative of one of the parties, they both concluded that such further examination was unnecessary. There can be no doubt that the Government successfully carried its burden of establishing a prima facie case of lack of discovery of a valuable mineral deposit.

Appellants' final contention is that they have proved affirmatively that a discovery of a valuable mineral deposit, consisting of tungsten and copper sulphide, has been made on the claims. In support of this contention, appellants cite the "prudent man test" and the testimony of their expert witness.

The "prudent man test" of what constitutes a discovery was set forth in Castle v. Womble, 19 L.D. 455, 457 (1894):

> "[W]here minerals have been found and the evidence is of such character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met." (Emphasis added).

We agree with appellants that the existence of ore in commercial quantities need not be proved beyond a reasonable doubt. However, proof that further exploration may be justified is not proof of a discovery of a valuable mineral deposit. What is necessary is proof that a prudent man would be justified in beginning actual development of the property with a reasonable prospect of success

in developing a paying mine. Converse v. Udall, supra; United States v. Kelty, supra; United States v. New Mexico Mines, Inc., 3 IBLA 101 (1971).

In testimony developed at the hearing, appellants' expert witness testified that he would consider a discovery to have been made on the claims. However, when questioned by the Administrative Law Judge, the witness testified that he meant that appellants would be justified in spending money on further exploration, not in actually beginning to develop a mine on the claims. We agree with Judge Luoma that this does not constitute discovery of a valuable mineral deposit.

Appellants have requested a further hearing to present evidence on issues of fact; the Field Solicitor for the United States has objected, since the appellants had full opportunity to present any evidence in the proceedings below. Appellants have not indicated the nature of the evidence, nor have they offered any explanation why it was not presented at the hearing. The request for a hearing on appeal is therefore denied.

Therefore, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge is affirmed.

Edward W. Stuebing
Member

We concur:

Joan B. Thompson
Member

Frederick Fishman
Member